

Before the  
Federal Communications Commission  
Washington, DC 20554

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OCT 21 2005

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In the matter of:

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Administrator's Decision on )  
Invoice Appeal by the Southwest ) CC Docket No. 02-6  
Virginia Education and Training )  
Network )  
)

The Appellant, a consortium of eligible and ineligible entities and the relevant party in this request, is identified by the Schools and Library Division of USAC as

Billed Entity Number: 154960

**Summary**

In accordance with Sections 54.719 through 54.721 of the Commission's rules now comes the Southwest Virginia Education and Training Network (SVETN) before the Federal Communication Commission (FCC) requesting review of a decision of the Universal Services Administrative Company (Administrator). This appeal concerns Funding Request Number 989248 a component of SLD Application Number 355039. The petitioner asks for reinstatement of the reduction to a Form 472 reimbursement made by the Schools and Libraries Division of USAC.

This petition is prompted by the receipt of a *USAC Administrator's Decision on Invoice Appeal* letter dated August 29, 2005 denying an appeal with the following explanation.

During the invoice review, funding can only be issued for products/services that were approved during the Form 471 review process. It was determined that you invoiced for products/services that were not approved during the Form 471 review process. These products/services include: Additions and Changes to Services. Therefore, your appeal is denied.

We urge the FCC to review the facts as set forth below and to determine, if possible, the basis for the Administrator's decision and reverse the denial of SVETN subsequent Appeal.

It is difficult to refute a ruling without knowing the reason(s) the Administrator had for examining our situation in the first place or what facts were used to determine that FRN 989248 should be reduced by a specific amount. SVETN could only infer what the issues may have been from the questions asked and the materials sought.

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Southwest Virginia Education and Training Network before the FCC

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Based on inferences we offered the Administrator these facts. The Form 472 BEAR request was for the first half (6 months) of the program year. The amount requested was more than half of the amount of the Funding Commitment Decision for the year. Upon request copies of the relevant invoices were provided for SLD examination. The amounts billed in each of the six months were not consistent month-to-month with the spreadsheet provided as part of the Line 21 attachment to Application Number 355039 associated with FRN 989248. SVETN explained that some amounts were catch up billing for earlier months, including services provided prior to the SLD Program Year, and that these ineligible charges were deducted prior to computing the amount shown on the BEAR Form. We answered detailed questions about a "Cisco Router" although no router charges are included in our invoices. Finally we questioned the propriety of making an invoice reduction affecting FRN 989248 with no notice to SVETN other than a copy of the Form 472 (BEAR Form) Notification Letter sent to Verizon South.

### **Background**

SVETN became aware, somewhat obliquely, by means of a copy of a Form 472 (BEAR Form) service provider Notification Letter directed to Verizon South, dated December 3, 2004 that we would be receiving an amount substantially less than we had requested. The Verizon letter showed that SLD had reduced the requested amount of \$20,531.58 for FRN 989248 to \$14,624.94 resulting in a reimbursement that was \$5,906.64 less than anticipated. The reimbursement modification explanation stated that SLD's action was taken "to remove ineligible product or serv(ice)."

Our appeal to the Administrator stipulated that no ineligible product or service was associated with the reimbursement request. Our position appears to be upheld up by USAC's review; there is no mention of ineligible products or services in the USAC's explanation for denying SVETN's appeal. Instead, the Administrator references "Additions and Changes to services" as the reason for denial.

For the record, SVETN's Bear Form request was first called into question in an email message dated 3/10/2004 in which Mr. Greg Kostyak (GK) asked Bruce Mathews (BM) for "copies of detailed service provider bills that correspond to amounts listed for the time period for which the charges relate." The materials requested were faxed and received by Mr. Kostyak on 3/16/2004. A haltingly intermittent email dialog between GK and BM continued throughout most of the year concluding with correspondence on 11/29/2004 in which GK sent a lengthy email posing 6 questions about a "Cisco router." BM responded to GK on 11/29/2004 with detailed answers that GK acknowledged without comment by email reply. At that point the nine and one-half-month long dialog ended. A summary of email and other correspondence is appended to this appeal.

Much of the communication between GK and BM concerned the varying amounts billed by Verizon South that, when compared to the contract amounts provided in a table accompanying our Form 471 application, were inconsistent from month to month. For reasons inexplicable to SVETN, during most of the program year including the six months of invoices examined after the fact by SLD, Verizon simply never billed the correct amounts. For example, two months were under billed; the following three months

were billed much higher, presumably to "catch up." Prompted by SLD's inquiry, SVETN explained that the "catch up" included charges for services prior to the start of the program year and by mutual agreement these charges were eliminated from consideration. In brief, SVETN believes the invoices and other documentation supplied to SLD supports our claim and are consistent with the Form 471 application.

Other than the fact that our funding request was reduced after its initial approval, the circumstance appealed to the Administrator, SVETN has no understanding of what is meant by an "Invoice Appeal." SVETN invoiced no one. Is it possible that our current situation is the result of some misunderstanding between USAC and Verizon South, a company that does have the authority to invoice USAC?

The appellant contends that the action taken by the Administrator to reduce our reimbursement, couched in any language, was faulty and misguided, especially in light of the arduous scrutiny that our Form 471 application undoubtedly received prior to the issuing of the original Funding Commitment Decision. Therefore we ask that the Administrator be directed to take the action necessary to restore the balance of our FRN 989248 reimbursement.

Respectfully Submitted this October 14, 2005.

Southwest Virginia Education and Training Network



Authorized Signature

Bruce Mathews, Executive Director  
(276) 469-4020

cc: Schools and Libraries Division  
Box 125—Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

Mr. Greg Weisiger  
Virginia Department of Education  
P. O. Box 2120  
Richmond, VA 23218

The Honorable Rick Boucher  
U.S. Representative, Ninth District  
188 East Main Street  
Abingdon, VA 24210

## ADDENDUM

3/10/2004 SLD Request  
Email from Greg Kostyak (GK) regarding SLC Invoice 449417  
Provider invoice: GTE2003A  
Undiscounted Amount: \$32,080.60  
Requested: \$20,531.58  
471 #: 355039  
FRN: 989248  
Service: Telecom

Requests "copies of detailed service provider bills that correspond to amounts listed for the time period for which the charges relate." Not sure what an SLC Invoice 449417 refers to.

3/16/2004 SVETN Response  
Email from Bruce Mathews (BM) to GK

Confirming that "the relevant 21 pages were faxed to your attention" and to which GK emailed back "Thanks."

>Time passes. (Four and one-half months.)

7/26/2004 SVETN Request  
Email from BM to GK

Paraphrase: what's up with invoice 449417-SLC? What can we do to receive our discounts?

7/26/2004 SLD Response  
Email from GK to BM

"I'll take a look at this and give you an update...we are reviewing all invoices on a first in-first out basis."

7/27/2004 SLD Response

GK follows up by writing "the amounts do not match up on the (invoice) summary sheet to the bills for the following (account numbers):

September 03 accounts 6553255435  
6622085773  
668846111  
682366785

October 03 accounts 130581650  
130581829  
130584773

7/27/2004 SVETN Response

BM provides this explanation: The invoices include charges for services received prior to the beginning of the program year. These "ineligible charges" were deducted. That's why the amounts billed for each of the six accounts listed above are greater than shown on our summary worksheet.

>More time passes.

In September 2004 BM learns from Verizon South about the existence of an Invoice Hotline: (973) 428-7335. Realizing that this series of queries and responses began in reference to an "invoice," BM calls the hotline.

10/06/2004 Left telephone call back message about this long overdue reimbursement.

10/07/2004 Called back by Scott Delaney (SD) who apologized for the protracted delay. SD assured me that he would speak with GK; he asked me to contact GK once again to inquire about progress toward releasing payment.

10/07/2004 SVETN Request  
Email to GK

BM provided a thread of the preceding email communication and asked "if additional information was needed from SVETN that would expedite this transaction."

10/13/2004 SLD Response  
Email to BM

"...(I am) working on an update for you. Will have (sic) within the next few business days." GK

> Some more time passes.

11/03/2004 SLD Response  
Email to BM

GK writes: "I have been trying to compare the bills you have sent to us to any previous submissions." [Not sure what "previous submissions" may be available.] GK goes on to query: "What exactly are 'Invoice Points?' Do you have a summary for each that appears on each monthly bill? [and] "You previously had mentioned ineligible items being removed. What are those ineligible items and how much did they total for each?"

11/03/2004 SVETN Response  
Email with BM's courtesy receipt acknowledgement

11/04/2004 SLD counter response  
Email with GK's further apology for delay

11/08/2004 SVETN Request  
Email to GK

We have assembled quite a bundle ( and ask) for your delivery address as it is too much to fax.

11/08/2005 SLD Response  
Email to BM

Delivery address provided.

>materials shipped FedEx overnight.

11/08/2004 SVETN Response

BM confirms overnight shipment, describes the materials and clarifies their usefulness. BM responds as follows to 11/03 questions about 1). 'Invoice Points' don't know; teleco jargon; appears to be a reference to locations that also correspond to "account numbers." 2) 'benchmark invoices:' those identified by SVETN as correct prior to additional charges being 'back billed.' 3). The amounts back billed represent the 'ineligible charges' that were deducted from our calculations before establishing the 'Undiscounted amount,' and other issues raised by GK in the 11/03 email.

11/08/2004 SVETN Correction

BM notes in an email to GK that the preceding message referenced FRN 988011 in error. The correct FRN is 989248.

11/29/2004 SLD Request  
GK sends a long email posing 6 questions about a 'Cisco router.'

11/29/2004 SVETN Response

BM provides a detailed response to the router questions. His answers are embedded all-caps in the 11/29 query.

11/29/2004 SLD Responds

GK: "That should do it; keep your fingers crossed...."

[Note: This was last item of correspondence from SLD prior to SVETN receiving the BEAR Notification Letter dated 12/03/2004.]

- # -

**Bruce Mathews**

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**From:** Kostyak, Greg [GKOSTYA@sl.universalservice.org]  
**Sent:** Monday, November 29, 2004 2:34 PM  
**Cc:** Bruce Mathews  
Alicia Young  
**Subject:** RE: 449417-2nd Request Follow-up-part 2

Thanks! This should do it, but keep your fingers crossed. Thanks again!

-----Original Message-----

**From:** Bruce Mathews [mailto:bmathews@swcenter.edu]  
**Sent:** Monday, November 29, 2004 1:50 PM  
**To:** Kostyak, Greg  
**Cc:** Alicia Young  
**Subject:** RE: 449417-2nd Request Follow-up-part 2

Mr. Kostyak,  
Thank you for the opportunity to respond. Please see below.  
Bruce Mathews

-----Original Message-----

**From:** Kostyak, Greg [mailto:GKOSTYA@sl.universalservice.org]  
**Sent:** Monday, November 29, 2004 12:05 PM  
**To:** Bruce Mathews  
**Cc:** Kostyak, Greg  
**Subject:** 449417-2nd Request Follow-up-part 2

Bruce,

Looks like we are almost there. All that is left is for you to answer the following questions concerning the charges for the Cisco Router.

Based on the documentation provided in the Form 471 Item 21 Attachments it appears that FRN 989248 includes charges associated with the following on-premise equipment: Cisco Router.

THE "CISCO ROUTER" OR ROUTERS IS/ARE LOCATED IN THE TELEPHONE CENTRAL OFFICE AND THE MODEL AND TYPE ARE TRANSPARENT TO SVETN. PLEASE REFERENCE THE BOX IN THE CENTER OF P. 15 OF OUR FORM 471 ITEM 21 ATTACHMENT WHERE VERIZON SOUTH (dba GTE) SPECIFIES A MONTHLY CHARGE FOR "CENTRAL OFFICE-BASED ROUTING FUNCTIONALITY." THIS SERVICE, ITEMIZED AT \$100 PER SITE PER MONTH, APPEARS ON MULTIPLE PHONE BILLS SUCH AS PAGE 9 (INVOICE DATED 10/10/03 PAGE 6 OF 9) OF OUR RECENT DOCUMENT BUNDLE.

The FCC has indicated that equipment at the applicant site is presumed to be Internal Connections, but that this presumption can be overcome in certain circumstances. In order for us to evaluate your request, please answer the following questions:

1. Is the equipment an integral component of a Telecommunications or Internet Access service?

YES

2. Will the leased equipment be provided by the same service provider that provides the associated Telecommunications or Internet Access transmission service?

YES

3. Does responsibility for maintaining the equipment rest with the service provider?

YES

4. Will ownership of the equipment transfer to the school or library in the future?

NO

5. Does the relevant contract or lease include an option for the applicant to purchase the equipment? NO

6. Will the leased equipment be used at the applicant site for any purpose other than receipt of the eligible Telecommunications Service or Internet Access of which it is a



part?

NO; THE EQUIPMENT IS NOT LOCATED AT THE APPLICANT SITE(S).

Please note that the following two questions are limited to data communications functionality, and do not include technologies limited to traditional voice communication.

Will the school or library's internal data communications network function without dependence on the equipment?

YES

8. Are there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise data communications equipment in part for other customers?

NO ON-PREMISE EQUIPMENT ASSOCIATED WITH THIS FRN; DOES NOT APPLY

It is important that we receive all of the information requested so we can complete our review. Failure to do so may result in a reduction or denial of funding. If you have any questions please feel free to contact me (Email is the best way to contact us due to the heavy volume of phone calls received and equally as heavy volume of invoices coming into the program). Please give us the SLC invoice # when making inquiries (This can be found in the subject line of the e-mail and/or fax). We are reviewing all invoices on a first in / first-out basis and that we are working on invoices as expeditiously as possible.

Please send us your responses by no later than Monday, December 6, 2004.

Thank you for cooperation and continued support of the Universal Service Program.

-----Original Message-----

From: Bruce Mathews [mailto:bmathews@swcenter.edu]  
Sent: Monday, November 08, 2004 12:07 PM  
To: Greg Kostyak  
Subject: RE: 449417-2nd Request Followup

Mr. Kostyak,

We have assembled additional materials that we believe are relevant--and will be helpful to you. The documents comprise quite a bundle. I would prefer to overnight ship them.

May I have your delivery address?

Bruce

+++++

Bruce Mathews bm4n@virginia.edu

Executive Director

Southwest Virginia Education and Training Network P.O. Box 1987, Abingdon, VA 24212-1987

---Located in the Southwest Virginia Higher Education Center, One Partnership Circle, on the campus of Virginia Highlands Community College, Abingdon 24210--- Voice (276)

619-4320; Fax (276) 628-9478 <<http://www.svetn.org>>

-----Original Message-----

From: Greg Kostyak [mailto:GKOSTYA@sl.universalservice.org]  
Sent: Thursday, November 04, 2004 7:12 AM  
To: Bruce Mathews  
Subject: RE: 449417-2nd Request Followup

Thanks and sorry again for the delay in getting back to you.

Sincerely,

Gregory Kostyak

Invoicing Dept., Schools and Libraries Division Fax # 973-599-6565 Phone. 973-581-6719 E-mail - GKostya@SL.UniversalService.org

>>> "Bruce Mathews" <bmathews@swcenter.edu> 11/03/04 04:37PM >>>

. Kostyak,

I have received your message and have begun organizing a reply.

Bruce Mathews

-----Original Message-----

From: Greg Kostyak [mailto:GKOSTYA@sl.universalservice.org]

Sent: Wednesday, November 03, 2004 11:15 AM

To: Bruce Mathews

Cc: Alicia Young

Subject: 449417-2nd Request Followup

Bruce,

I have been trying to compare the bills you have sent to us to any previous submissions and did not notice any on file. What exactly are "Invoice Points"? Do you have a summary for each that breaks down the total amount that appears on each monthly bill? You had previously mentioned about ineligible items being removed. What are these ineligible items and how much did they total for each?

It is important that we receive all of the information requested so we can complete our review. Failure to do so may result in a reduction or denial of funding. If you have any questions please feel free to contact me (Email is the best way to contact us due to the heavy volume of phone calls received and equally as heavy volume of invoices coming into the program). Please give us the SLC invoice # when making inquiries (This can be found in the subject line of the e-mail and/or fax). We are reviewing all invoices on a first in / first-out basis and that we are working on invoices as expeditiously as possible.

If we do not receive the information within the next 7 calendar days (due no later than next Wednesday, November 10, 2004, your application will be reviewed using the information currently on file.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Gregory Kostyak

Shipping Dept., Schools and Libraries Division Fax # 973-599-6565 Phone. 973-581-6719 E-mail - GKostya@SL.UniversalService.org